

AMENDED IN SENATE JUNE 3, 2003

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE APRIL 22, 2003

SENATE BILL

No. 1009

Introduced by Senator Alpert

February 21, 2003

An act to amend ~~Section 6487 of, and to add and repeal Sections 6487 and 7101 of,~~ and to add Sections 6452.1, 6487.3, and 18510 ~~of to,~~ the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1009, as amended, Alpert. Use tax collection: income tax forms.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Existing law requires retailers, as specified, to register with, and to obtain a seller's permit from, the State Board of Equalization. The State Board of Equalization issues forms for the computation and payment of sales and use taxes collected or owed by those retailers. There is no requirement for persons, other than retailers, that owe use taxes to register with the State Board of Equalization. Consequently, those persons do not receive forms for the computation and payment of use taxes.

This bill would, ~~for the period~~ *taxable years* beginning on January 1, 2004, and ending on December 31, 2009, authorize a person to make an irrevocable election to report qualified use tax, as defined, on that person's income tax form.

This bill would require the Franchise Tax Board to revise the income tax returns to allow a person to report and remit qualified use taxes to the Franchise Tax Board. This bill would require the Franchise Tax Board to remit the qualified use taxes collected, ~~less the Franchise Tax Board's costs of administration,~~ to the State Board of Equalization.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6452.1 is added to the Revenue and
2 Taxation Code, to read:

3 6452.1. (a) Notwithstanding Section 6451, every person that
4 purchases tangible personal property, the storage, use, or other
5 consumption of which is subject to qualified use tax, as defined in
6 subdivision (b), that is otherwise required to report and remit that
7 tax pursuant to this part, may elect to report and remit qualified use
8 tax on an acceptable tax return.

9 (b) (1) A person that reports qualified use tax on an acceptable
10 tax return is deemed to have made the election authorized by this
11 section.

12 (2) (A) In the case of a married individual filing a separate
13 California personal income tax return, an election may be made to
14 report either one-half of the qualified use tax or the entire qualified
15 use tax on his or her separate California personal income tax
16 return.

17 (B) If an individual elects to report one-half of the qualified use
18 tax, that election will not be binding with respect to the remaining
19 one-half of the qualified use tax owed by that individual and that
20 individual's spouse.

21 (c) An election to report qualified use tax on an acceptable tax
22 return shall be irrevocable.

23 (d) For purposes of this section:

24 (1) "Acceptable tax return" means a timely filed original
25 return that is filed pursuant to Article 1 (commencing with Section
26 18501), Article 2 (commencing with Section 18601), Section
27 18633, or Section 18633.5 of Chapter 2 of Part 10.2.

28 (2) (A) ~~"Qualified~~ Except as provided in subparagraph (B),
29 "qualified use tax" means the use tax imposed ~~on the storage, use,~~
30 ~~or other consumption of tangible personal property, used within~~

~~this state, that is brought into this state by a person or that is shipped to a person within this state by a retailer located outside of this state. under this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.~~

(B) "Qualified use tax" does not include:

(i) Use tax that applies to a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code or use tax that applies to a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or to a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.

(ii) Use tax imposed on a vessel vehicle, vessel, or aircraft.

(iii) Use tax imposed on a lessee of tangible personal property.

(3) "Use tax" means the use tax imposed under this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(e) If a person elects to report qualified use tax on an acceptable tax return, that person shall comply with all of the following:

(1) The qualified use tax shall be reported on and remitted with an acceptable tax return.

(2) The qualified use tax shall be reported on and remitted with an acceptable tax return that is required to be filed for the taxable year in which the liability for the qualified use tax was incurred.

(f) (1) The penalties and interest imposed under this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) shall apply to use tax reported as qualified use tax on an acceptable return.

(2) Any claims for refunds or credits of any use tax reported as qualified use tax on an acceptable tax return shall be made in accordance with Chapter 7 (commencing with Section 6901) of this part.

(3) Qualified use tax shall be considered to be timely reported and remitted for purposes of this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section

1 7200)), and the Transactions and Use Tax Law (Part 1.6
2 (commencing with Section 7251)), if the qualified use tax is timely
3 reported on and remitted with an acceptable tax return in
4 accordance with the provisions of this section.

5 (g) Notwithstanding a person's election to remit and to report
6 qualified use tax on an acceptable tax return, the State Board of
7 Equalization is not precluded from making any determinations for
8 understatements of qualified use tax against that person in
9 accordance with Part 5 (commencing with Section 6451).

10 (h) Any ~~payment by~~ *payments and credits shown on the return,*
11 *together with any other credits associated with that person's*
12 *account, of* a person that elects to report qualified use tax on an
13 acceptable tax return shall be applied in the following order:

14 (1) Taxes imposed under Part 10 (commencing with Section
15 17001) or Part 11 (commencing with Section 23001).

16 (2) Penalties and interest, if any, imposed under Part 10.2
17 (commencing with Section 18041).

18 (3) Qualified use tax reported on ~~that individual's California~~
19 ~~personal income tax~~ *the acceptable* return in accordance with this
20 section.

21 (i) (1) This section does not apply to a person who is otherwise
22 required to hold a seller's permit or to register with the State Board
23 of Equalization pursuant to Part 1 (commencing with Section
24 6001) of this division.

25 (2) This section applies to purchases of tangible personal
26 property made on or after January 1, 2004, in taxable years
27 beginning on or after January 1, 2004, and on or before December
28 31, 2009, and as of that date ~~is repealed~~ *becomes inoperative,*
29 unless a later enacted statute extends the ~~repeal date~~ *operation of*
30 *this section.*

31 (3) Notwithstanding the repeal of this section, any provisions
32 in this section or Section 18510 relating to collection activities
33 attributable to qualified use taxes reported prior to the repeal date
34 of this section shall continue in the same manner as if this section
35 were still in effect.

36 SEC. 2. Section 6487 of the Revenue and Taxation Code is
37 amended to read:

38 6487. (a) For taxpayers filing returns, other than a return
39 filed pursuant to Section 6452.1, on other than an annual basis,
40 except in the case of fraud, intent to evade this part or authorized

rules and regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed within eight years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

(b) For taxpayers filing returns on an annual basis, except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the last day of the calendar month following the one-year period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed within eight years after the last day of the calendar month following the one-year period for which the amount is proposed to be determined.

(c) The limitation specified in this section does not apply in case of a sales tax proposed to be determined with respect to sales of property for the storage, use, or other consumption of which notice of a deficiency determination has been or is given pursuant to subdivision (a) or (b) or pursuant to Section 6486, 6515, or 6536. The limitation specified in this section does not apply in case of an amount of use tax proposed to be determined with respect to storage, use, or other consumption of property for the sale of which notice of a deficiency determination has been or is given pursuant to subdivision (a) or (b) or pursuant to Section 6486, 6515, or 6536.

SEC. 3. Section 6487.3 is added to the Revenue and Taxation Code, to read:

6487.3. (a) (1) For persons that elect to report qualified use tax in accordance with Section 6452.1, except in the case of fraud, intent to avoid this part or authorized rules and regulations issued by the board, or the gross understatement of qualified use taxes, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within three years after the last

1 day for which an acceptable tax return is due or filed, whichever
2 occurs later.

3 (2) In the case of a gross understatement of qualified use tax,
4 every notice of a deficiency determination with respect to the
5 qualified use tax shall be mailed within six years after the last day
6 for which an acceptable tax return is due or filed, whichever occurs
7 later.

8 (3) For purposes of this subdivision a “gross understatement of
9 qualified used tax” is a deficiency that is in excess of 25 percent
10 of the amount of qualified use tax reported on a person’s
11 acceptable tax return. In the case of married individuals filing
12 separate California personal income tax returns, the total amount
13 of qualified use tax reported will be considered in determining
14 whether there is a gross understatement of qualified use tax.

15 (4) For purposes of this section “acceptable tax return” means
16 a timely filed original return that is filed pursuant to Article 1
17 (commencing with Section 18501), Article 2 (commencing with
18 Section 18601), Section 18633, or Section 18633.5 of Chapter 2
19 of Part 10.2.

20 (b) This section *shall* be operative on January 1, 2004, and shall
21 remain operative until December 31, 2009, and as of that date ~~is~~
22 ~~repealed~~ *becomes inoperative*, unless a later enacted statute
23 extends the ~~repeal date~~ *operation of this section*.

24 SEC. 4. *Section 7101 of the Revenue and Taxation Code is*
25 *amended to read:*

26 7101. All fees, taxes, interest, and penalties imposed and all
27 amounts of tax required to be paid to the ~~State-state~~ under this part
28 shall, *except as provided in Section 6452.1*, be paid to the board
29 in the form of remittances payable to the State Board of
30 Equalization of the State of California. The board shall transmit
31 the payments to the ~~State~~ Treasurer to be deposited in the State
32 Treasury to the credit of the Retail Sales Tax Fund.

33 SEC. 5. Section 18510 is added to the Revenue and Taxation
34 Code, to read:

35 18510. (a) The Franchise Tax Board shall revise the returns
36 required to be filed pursuant to this article, Article 2 (commencing
37 with Section 18601), Section 18633, and Section 18633.5 in a
38 form and manner approved by the State Board of Equalization, to
39 allow a person to report and pay qualified use tax in accordance
40 with the provisions of Section 6452.1.

1 (b) Any ~~payment~~ *payments and credits shown on the return,*
2 *together with any other credits associated with that person's*
3 *account,* of a person that elects to report qualified use tax on an
4 acceptable tax return shall be applied in the following order:

5 (1) Taxes imposed under Part 10 (commencing with Section
6 17001) or Part 11 (commencing with Section 23001).

7 (2) Penalties and interest, if any, imposed under this part.

8 (3) Qualified use tax as reported on ~~that individual's California~~
9 ~~personal income~~ *the acceptable* tax return, in accordance with
10 Section 6452.1.

11 ~~(c) (1) The State Board of Equalization shall enter into an~~
12 ~~agreement with the Franchise Tax Board to provide for~~
13 ~~reimbursement to the Franchise Tax Board for the expenses~~
14 ~~incurred by the Franchise Tax Board to implement and administer~~
15 ~~this section.~~

16 ~~(2)~~

17 (c) The Franchise Tax Board shall transfer the qualified use tax
18 received pursuant to Section 6452.1, to the State Board of
19 Equalization within 60 days from the date the use tax is received.

20 (d) This section shall be operative for returns filed for taxable
21 years on and after January 1, 2004, and ending on or before
22 December 31, 2009, and as of that date ~~is repealed becomes~~
23 ~~inoperative,~~ unless a later enacted statute extends the ~~repeal date.~~
24 *operation of this section.*

